

INITIAL STATEMENT OF REASONS

Title 13, Division 1, Chapter 1

Article 4.2 – Vehicle Dealers

The Department of Motor Vehicles (department) proposes to amend Sections 272.00 and 272.02 in Article 4.2, Chapter 1, Division 1, Title 13 of the California Code of Regulations, relating to Vehicle Dealers.

Current regulations require pertinent business records to be open to inspection, retained for no less than three years and maintained at specified locations, with exceptions, upon approval of the department. While regulations implement some storage standards, they do not address vital requirements such as retention of original documents, requirements for producing quality copies of original documents, retention of copies and the secure destruction of original documents.

The department proposes to strengthen business record storage provisions by, among other things:

- Requiring a dealer to maintain business records at the principal place of business or branch location for 18 months following the subject vehicle transaction.
- Authorizing a dealer to maintain business records at an offsite storage location within the state.
- Requiring records to be retrievable upon three days notice.
- Implementing federal safeguard standards for storage.
- Authorizing a dealer to create an electronic copy of original business record provided the electronic copy meets specified requirements.
- Authorizing a dealer to dispose of original business records pursuant to requirements of Civil Code section 1798.81.
- Authorizing the use of a third party to store records.

§ 272.00. Business Records.

Subsection (a) is amended to delete the word ‘must’ and insert the word ‘shall.’ This amendment is necessary to ensure conformity in this article.

Subsection (c) is adopted to ensure dealers are aware that, even though they are in compliance with subsections (a) and (b) governing business records maintenance and retention, they must continue to adhere to other applicable laws and regulations relating to document maintenance.

§ 272.02. Location of Business Records.

Section 272.02 is deleted due to its lack of clarity.

Subsection (a) is adopted to require all dealers to maintain original business records at their principal place of business, or branch location, for at least eighteen months after the subject

Vehicle Dealers: Business Records

Initial Statement of Reasons

vehicle transaction. This subsection is adopted for clarity purposes and will ensure all vehicle dealers in California maintain original business records at their principal place of business or branch location for a specific period of time.

Subsection (b) is adopted to authorize a dealer to maintain records at either the branch location or the principal place of business when the vehicle transaction takes place at a branch location.

Subsection (c) is adopted to allow dealers to maintain original business records at an offsite storage location after the 18 month retention period provided in subsection (a) of this section. This subsection also requires that the documents, if stored offsite, be retrievable upon three days notice and in a manner that meet the requirements of 15 U.S.C. 6801(b), related to the disclosure of nonpublic personal information.

Subsections (a), (b) and (c) establish retention schedules and storage locations provisions for dealer business records. As the applicable business documents are department-issued and, therefore, property of the department, it has been determined necessary to codify those locations that are acceptable to the department for document storage and the duration of time the department expects business documents to be retained at such locations.

Subsection (d)(1) is adopted to authorize a dealer to create an electronic copy of an original business record. This subsection also requires the electronic copy to satisfy certain record retention requirements and to be maintained for the length of three years.

Subsection (d)(1)(A) is adopted to require the electronic copy to be in a non-alterable format.

Subsection (d)(1)(B) is adopted to require the electronic copy to be retained in a format that permits the document to be readily accessible and retrievable.

Subsection (d)(1)(C) is adopted to require the electronic copy to be a legible, complete and accurate reproduction of the original document.

Subsection (d)(1)(D) is adopted to require a back-up copy of the electronic copy to be retained at an on-site or off-site location that will allow for retrieval within three days of notice.

Subsection (d)(1)(E) is adopted to require devices for storing back-up copies of records to have appropriate security controls to protect records from unauthorized viewing or access.

Subsections (d)(1)(A) through (d)(1)(E) establish criteria to produce an acceptable copy of an original document and provide standards for back-up storage and security. Given the importance these documents hold with respect to department functions, it is necessary to require a copy of a business record to be created in the highest quality possible to ensure its value for future department needs. The department's authority to establish electronic copy standards is provided in Vehicle Code section 1801.1(c).

Vehicle Dealers: Business Records

Initial Statement of Reasons

Subsection (d)(2) is adopted to authorize disposal of the original business document once the electronic copy is produced and meets the requirements of subsections (d)(1)(A) through (d)(1)(D). This subsection also requires the documents to be disposed of pursuant to Civil Code section 1987.81, which provides, “A business shall take all reasonable steps to dispose, or arrange for the disposal, of customer records within its custody or control containing personal information when the records are no longer to be retained by the business by (a) shredding, (b) erasing, or (c) otherwise modifying the personal information in those records to make it unreadable or undecipherable through any means.” This requirement is necessary to ensure confidential customer information is not accessed.

Subsection (e) is adopted to ensure the dealer is aware that, if business records are stored through a third party, the dealer’s responsibility to produce business records when required is not diminished.

Authority and Reference Note: Vehicle Code sections 4456, 5753 and 11709, and Civil Code section 1798.81 are added to the Reference Note.